

No. 12548

2643

United States  
Court of Appeals  
for the Ninth Circuit.

WOODWORKERS TOOL WORKS, a Corporation,

Appellant,

vs.

WILLIAM J. BYRNE,

Appellee.

SUPPLEMENTAL  
Transcript of Record

Appeal from the United States District Court,  
Southern District of California,  
Central Division.

FILED

SEP 22 1950

PAUL P. O'BRIEN, CLERK



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Appeal from the United States District Court,  
Southern District of California,  
Central Division.



District Court of the United States for the Southern  
District of California, Central Division

Civil Action File No. 9134-Y

WILLIAM J. BYRNE,

Plaintiff,

vs.

WOODWORKERS TOOL WORKS, a Cor-  
poration,

Defendant.

SUMMONS

To the above-named Defendant :

You are hereby summoned and required to serve upon John W. Olson, plaintiff's attorney, whose address is 639 South Spring Street, Los Angeles 14, California, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

EDMUND L. SMITH,

Clerk of Court.

[Seal] By /s/ G. A. SAUNDERS,

Deputy Clerk.

Date: January 26, 1949.

## Return on Service of Writ

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the annexed Summons and Complaint on the therein-named Elmer Preuer as agent for Woodworkers Supply Company by handing to and leaving a true and correct copy thereof with Elmer Preuer personally at Los Angeles, Calif., in said District on the 27th day of Jan., 1949.

JAMES J. BOYLE,  
U. S. Marshal.

By /s/ EARLE L. BAUGHER,  
Deputy.

[Endorsed]: Filed Feb. 2, 1949.

Los Angeles, California, Monday, March 21, 1949  
10:00 A.M.

Before: Hon. Leon R. Yankwich,  
Judge.

Appearances:

JOHN W. OLSON,  
Attorney for Plaintiff.

TRIPP & CALLAWAY, by  
ROBERT E. DUNNE,  
Attorneys for Defendant.

TRANSCRIPT OF THE HEARING ON MO-  
TION TO DISMISS ACTION AND QUASH  
RETURN OF SERVICE OF SUMMONS

The Court: This shows a service on Elmer Preuer, as agent for Woodworkers Supply Co.

Mr. Dunne: Your Honor, the service was made upon Mr. Preuer. We have the affidavit of Mr. Preuer that he is not an officer, a managing or general agent, or an agent authorized by appointment or law to receive process——

The Court: How does he appear to be doing business, under the same name?

Mr. Dunne: There was a different name. The parties served in this action were the Woodworkers Supply Company.

The Court: The action is for personal injuries caused by defective machinery?

Mr. Dunne: That is correct.

The Court: I will hear from the other side.

Mr. Olson: I would like to call the Court's at-

tention to the affidavit of the defendant, the moving party. There is no evidence of the fact that the Woodworkers Tool Works was not doing business within the state and the Woodworkers Supply Company was not their agent for that business. I submit that the affidavits speak for themselves.

The Court: We have the same situation in music cases, where we have men who merely solicit music for publication. They are not agents. All of the billing is done from a distance, and we have all held that they are not doing business. I have a long list of California cases dealing with this problem. The last case is *West Publishing Company vs. Superior Court*, 20 Cal. 2d, 720.

Mr. Olson: In this case, your Honor, our investigation and the affidavits on file and the exhibits indicate and prove that the Woodworkers Supply Company did bill them and the Woodworkers Supply Company made all the collections. There are no facts here submitted by the moving party that they are not doing business within the state, and it seems to me it is their burden of proof.

The Court: The Woodworkers Tool Company is——

Mr. Olson: The Illinois Corporation.

The Court: The Selby Company is the plaintiff's employer?

Mr. Olson: Correct, your Honor.

The Court: This case is governed by the California law, and all of these references don't help. The only case that is helpful is the case I have in front of me, the *West Publishing Company v. the Superior Court*.



Mr. Olson: I submit the Woodworkers Tool Works shows they are doing business here.

The Court: I am inclined to think that their affidavit is merely a negative in view of your positive affidavit. In the case the Thew Shovel Co. vs. the Superior Court, the identical situation arose. They were distributors although most of the contracts were entered into with the manufacturer direct. The Court held that they were doing business. And in West Publishing Company vs. the Superior Court of the City and County of San Francisco, the Supreme Court, in an opinion by Justice Curtis, went very carefully into the matter, and while there is law that ordinary solicitation might not constitute doing business, nevertheless, a continuance of doing that subjects the company to jurisdiction. It is a very elaborate opinion, concurred in by all the justices except Justice Traynor. You are merely raising the point of jurisdiction; you are merely asking me to quash the service if they are not the managing agent.

In the West Publishing Company case the man was an agent. The question was whether he was doing business in the state. Pursuant to a separate contract made with each, the exclusive right to solicit orders for its publications in California is granted by petitioner to four salesmen. In this particular case the action was commenced against the West Publishing Company, and personal service of process was made upon three of the company's salesmen operating in this state and a copy of the complaint and summons was sent by registered mail to the company's home office in St. Paul, Minnesota.

Mr. ~~Olson~~ <sup>Dunne</sup>: The affidavit has established Mr. Preuer was not connected with the company.

The Court: That is a denial. I have to take this affidavit in conjunction with their affidavit.

Mr. Olson: The affidavits are based on hearsay, and are conclusions. I feel we should have a hearing on the matter. This is entirely on affidavit.

The Court: A motion to quash summons is heard only by affidavit and answered by affidavit. You have their affidavit and you have your affidavit, and that is sufficient. We don't hold hearings on these matters. The motion will be denied. How many days do you want?

Mr. Dunne: Twenty days.

[Endorsed]: Filed April 19, 1950.

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[Endorsed]: No. 12548. United States Court of Appeals for the Ninth Circuit. Woodworkers Tool Works, a Corporation, Appellant, vs. William J. Byrne, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: May 16, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.